IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3623 OF 1991

M/s.Kashinath Degadulal Oil Mill
situate at Islampura Ward,
Malegaon Tahsil, District Nasik
through its Partners :

1. Anadilal Dagadulal Agrawal

2. Damodhar Fatehlal Agrawal

3. B.R.Dudhawat

4. Mohanlal Radhakisan

5. Suresh Dagadulal

6. Rameshchandra Dagadulal **..Petitioners**

Vs.

1. The State of Maharashtra
through the Secretary to the
Government, Revenue Department,
Mantralaya, Bombay - 400 032.

2. Sub-Divisional Officer,
Malegaon Sub Division,
Malegaon, Dist.Nashik.

3. The Tahsildar,
Malegaon Sub Division,
Malegaon, Dist. Nashik. **..Respondents**

Mr.P.S.Dani with Mrs.Sharvari Shailendra for the Petitioners.
Mr.A.H.Palekhar, A.G.P. for the Respondents.

CORAM : DR.S.RADHAKRISHNAN,J.

DATE : 8TH SEPTEMBER, 2006.

ORAL JUDGMENT :-

1. Heard the learned Counsel for the Petitioners and the learned A.G.P. for the Respondents. By this Petition, the Petitioners are challenging the order dated 13th March, 1991 passed by the learned Collector of Nashik, refusing to entertain the Appeal filed by the Petitioners under section 247 of the Maharashtra

Land Revenue Code, 1966 with regard to the demand notice dated 30th March, 1991. However, it appears that as far as the Petitioners are concerned, originally, the land revenue was fixed in the year 1924 and as per the earlier provisions of the Land Revenue Code, the said land revenue was guaranteed for a period of 50 years. In the mean while the Maharashtra Land Revenue Code, 1966 came into force and the Tahsildar of Malegaon had issued a demand notice dated 30th March, 1991 demanding the land revenue right from 1981-82 to 1987-88, 1988-89, 1985-86 to 1987-88, and 1988-89 to put it in other words, by the said notice, the land revenue was demanded for the period from 1981-82 to 1988-89. Thereafter, the Respondents Revenue Authority seems to have issued two more notices demanding the land revenue from the Petitioners. With regard to the last notice, the Petitioners appear to have filed the aforesaid Appeal challenging the basis on which such revision has been effected by the Tahsildar.

2. Mr.Dani, the learned Counsel for the Petitioner mainly sought to contend that in the light of the provisions of section 120 read with section 116 of the Maharashtra Land Revenue Code, the revision which has been adopted by the Revenue Authority, is totally unjustified.

3. The challenge with regard to the order dated 13th March, 1991 passed by the learned Collector of Malegaon is that the learned Collector had declined to

entertain the Appeal mainly on the ground that there was no decision or order passed by the Revenue Officer as such and hence, no Appeal would lie under section 247 of the Maharashtra Land Revenue Code.

4. Perusal of section 247 of the Maharashtra Land Revenue Code, clearly indicates that an Appeal would lie against any decision or order passed by a Revenue or certain Officer specified in column-1 of Schedule-E under this Act. Admittedly, the aforesaid demand made by the Tahsildar is a purported revision demanding certain amount by way of arrears of land revenue payable by the Petitioner. The same cannot be treated that it is not a decision or order and as such no Appeal lies. If such constructions were to be adopted, the Petitioner would have no remedy in law to challenge the levy and establish such a contention that the entire revision is totally contrary to the aforesaid provisions of section 120 read with section 116 of the Maharashtra Land Revenue Code.

5. Under the aforesaid facts and circumstances of the case, without going into merits and demerits of the case, I hold that an Appeal lies with regard to the aforesaid demand notice by the Tahsildar, dated 26th September, 1988 being Exhibit-A to the Petition. However, the Appeal shall not lie with the Collector of Nashik, but the said Appeal would lie as per the Schedule-E of the Maharashtra Land Revenue Code to the Sub Divisional Officer or Assistant/Deputy Collector as may be specified by the Collector in that behalf,

as mentioned in the said schedule.

6. The learned A.G.P. is also unable to controvert that no such Appeal shall lie against such an order under section 247 of the Maharashtra Land Revenue Code. In view thereof, the order passed by the learned Collector, Nashik dated 13th March, 1991 stands quashed and set aside.

7. The Appeal preferred by the Petitioners before the Sub Divisional Officer Malegaon, shall be treated as appropriate Appeal before the concerned Appellate Authority as mentioned under Schedule-E of the Maharashtra Land Revenue Code and the said Appellate Authority shall decide the same strictly on its own merits in accordance with law. The learned Counsel for the Petitioners states that the Sub Divisional Officer will be the proper Appellate Authority. Hence, the Petitioners shall appear before the Appellate Authority with regard to the aforesaid Appeal on 9th October, 2006, so as to enable the Sub Divisional Officer to fix the schedule of hearing. The Appellate Authority is directed to dispose of the Appeal filed by the Petitioners, as expeditiously as possible, preferably within a period of six months from 9th October, 2006.

8. Needless to say that the interim relief granted by this Court in terms of prayer clause (c) of this Petition shall continue during the pendency of

the Appeal before the said Sub Divisional Officer, Malegaon and for further period of four weeks from the date of decision, if the same would adverse to the Petitioner. The prayer clause (c) reads as under :-

> "(c) Pending the hearing and final disposal of this Petition, this Hon'ble Court be pleased to stay all further proceedings in pursuance to the notices dated 26th September, 1988, 15th March, 1989 and 6th September, 1989, Exhibits 'A', 'B' and 'D' respectively."

9. All the contentions of the Petitioners are expressly kept open. Writ Petition stands disposed of accordingly.

(DR.S.RADHAKRISHNAN,J.)